

ARKANSAS SUPREME COURT

No. CR 08-109

DUSTIN LONG
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered September 25, 2008

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
WASHINGTON COUNTY, CR 2006-
1388, HON. WILLIAM A. STOREY,
JUDGE]

MOTION DENIED.

PER CURIAM

A jury found petitioner Dustin Long guilty of second-degree sexual assault and sentenced him to 144 months' imprisonment in the Arkansas Department of Correction. Petitioner brought a pro se motion for belated appeal in this court and we remanded to the trial court for findings of fact concerning whether trial counsel had been relieved following petitioner's conviction and whether petitioner had advised counsel of his desire to appeal. *Long v. State*, CR 08-109 (Ark. Mar. 20, 2008) (per curiam).

The trial court conducted an evidentiary hearing, and the record of that hearing, including the trial court's findings, has now been provided on remand. The trial court entered findings that trial counsel was not relieved and that petitioner had not advised trial counsel of his desire to appeal the judgment.

At the hearing on remand, petitioner testified that he never directly advised trial counsel that he wished to appeal. Petitioner's wife testified that she consulted other attorneys concerning an

appeal, but she did not testify that she had advised trial counsel of petitioner's desire to appeal. Petitioner asserted during the hearing that counsel should have been aware that he wished to appeal his conviction because one of the attorneys consulted contacted trial counsel to discuss the possible appeal. Yet, there was no testimony that trial counsel was, in fact, advised of petitioner's desire to appeal.

As we noted in our previous opinion, Arkansas Rule of Appellate Procedure–Criminal 16(a) provides that an attorney representing a defendant is obligated to continue representing the defendant until relieved by the appropriate court. *See Hammon v. State*, 347 Ark. 267, 65 S.W.3d 853 (2002). From the record, it is apparent that appellant was aware of his right to appeal. A defendant may waive his right to appeal by his failure to inform counsel that he wishes to appeal within the thirty days allowed for filing a timely notice of appeal. *Strom v. State*, 348 Ark. 610, 74 S.W.3d 233 (2002). Because petitioner failed to advise trial counsel that he wished to appeal his conviction, he waived his right to appeal, and counsel was not at fault for failing to perfect the appeal.

Petitioner failed to show attorney error and has stated no good reason for this court to grant a belated appeal. *See McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). Accordingly, we deny the motion.

Motion denied.

Glaze, J., not participating.